

CASE TRANSLATION: GREECE

CASE CITATION:

Payment Order 1932/2011

NAME AND LEVEL OF COURT:

Court of First Instance of Athens

PRESIDENT OF THE COURT:

F. Vossos

Definition and legal nature of electronic documents; evidential weight of an e-mail message; function of an e-mail address as an electronic signature; evidential weight of the printed copy of an e-mail; authenticity issues regarding electronic documents

Payment Order 1932/2011

Court of First Instance of Athens

President of Court (1 member): F. Vossos

Lawyer: A. Kourtis

I. An electronic document is defined as “any data created on the magnetic disc of a computer, which, after having being processed by the computer system, can be printed by means of the computer programme in a way that makes them readable by the human being, either on the computer screen or through the printer attached to the computer”.

So, an electronic document does not constitute in reality the strict “equivalent” of traditional paper-based documents, as they are described in the Civil Procedure Code, mainly because is not borne by a stable and durable medium, however it can be considered as an “intermediate form”, that is legally equivalent to “private” documents, due to their proximity, according to the legislator.¹

According to common experience (common usages and practices), for the operation of e-mail as a means of communication over the Internet, besides the connection with an Internet Service Provider (the ISP provides this service via special software permanently installed by the user in his computer), the use of a specific password is also required in order for each user to be identified in the system, either as a sender or a receiver of electronic messages. This password is, in fact, the user’s electronic address (e-mail), as it is originally chosen by the user himself in such a way that the specific combination of letters, numbers or symbols (the password) with the symbol “@” only reflects to the user that has chosen it, and cannot be legally used by anyone else. The representation of the sender’s address in the message makes his identity specific for the recipient of the message, so he cannot be confused with any other user of the same system, while his congruency with the content of the message is indisputable. For electronic mail to come under the rules of articles 443 and 444 of the Civil Procedure Code,² it is necessary to understand how it works, because this is not simply an electronic document that is saved in the software of a personal computer, or of a document that its representation is transferred by means of wireless or otherwise (e.g. facsimile transmission).

The sending of the message leads to the congruency of the content of the message and of the sender, in such a way that the message cannot be transferable if it is not accompanied by the sender’s electronic address and, of course, if there is no specific and existing recipient. The logical consequence is that in the sending of a message by way of electronic mail, the sender’s will is identified

¹ S. Kousoulis, *Contemporary forms of paper transaction* (Sygchrones morfes eggrafis synallagis), 1992, pp. 138-142.

² Article 443 of the Civil Procedure Code: Elements of private documents. “A private document has conclusive power only when it has the manuscript signature of its editor or, instead of a signature, a mark that he (the editor) drew on the document and is verified by a notary or any other public authority, which confirms that the mark is placed instead of the signature and that the editor declared that he cannot sign”. Article 444 of the Civil Procedure Code:

Official books of merchants and other professionals. “1. The definition of private documents also contain

a) the books that merchants and professionals are obliged to keep under commercial law or other statutes
b) the books that lawyers, notaries, doctors, pharmacists and nurses are obliged to keep under current statutes
c) photographic and cinematic representations, recordings and any other mechanical representation.

NOTE: A second paragraph was added in article 444, in an attempt to define the term

mechanical representation. According to this, “Mechanical representation, under the meaning of paragraph 1, is any means that is used by a computer or a computer’s memory in an electronic, magnetic or any other means, for recording, storage, production or reproduction of evidence that cannot be read directly, as well as any magnetic, electronic or other material on which any information, image, symbol or sound can be recorded, individually or in combination, as long as these means and materials are legally capable of proving facts of legal importance”.

with his electronic address, so it is technically possible for the recipient to receive it and, of course, the form or the layout of the mechanical representation of the content in the document is of less importance.

So, the determination of the electronic address in a unique manner from the user himself and its representation in every electronic message sent, is a proof of the editor's identity and, pro rata with what is defined as the traditional document in article 443 of the Civil Procedure Code, its mechanical representation in a document, in accordance with article 444 case c of the Civil Procedure Code, can be defined as a private document, with a conclusive power against its editor (combination of articles 443, 444, 445 Civil Procedure Code), because each user electronic address is unique, in that it is chosen by the sender himself, and has the characteristic of a manuscript signature, even though it does not have the traditional form of a signature.³ The above-mentioned determinations are valid regardless of where the sender's electronic address appears in relation to the text that it accompanies when it appears on the screen of the computer, or its mechanical representation on paper; this follows because it is necessary to take into consideration that the authentication of the sender and the binding to his will of the content that is included in the electronic message are accomplished through the process previously described. This means that any text sent as an electronic message can only be accompanied with a specific electronic address in its entirety, no matter how the form is represented in a mechanical way and where it substantially differs from the traditional meaning of a document.⁴

Thus, the legally attested copy of an electronically sent message, which exists in the hard disc of the recipient, is a full proof that its contents come from its editor-sender, according to in the provisions of article 445 of the Civil Procedure Code.⁵

However, the way the system operates, as set out above, allows for a message to be sent by a person other than the person whose electronic mail address it is, without their approval. The defectiveness of such a message sent directly is similar to a traditional act of forgery, as described in articles 460 and sequential of the

Civil Procedure Code. The burden of proof lies to whoever appeals that defectiveness, because the function of the electronic mail acts to guarantee its credibility, and any possible malfunction does not originate from a system flaw but from the intervention by a third party.

According to the above-mentioned discussion, article 457 paragraph 4 of the Civil Procedure Code⁶ is defined narrowly in respect of the similarity between the content of the personal computer hard disc and its mechanical representation, because an electronic message is, for the recipient, an incoming message to his personal computer and, therefore, he can be liable for the validity of a copy of the message that he has received.⁷

Furthermore, contracts that are not subject to form requirements (as is the debt acknowledgement) may be concluded by means of electronic documents and, particularly, through the use of the Internet, by exchanging the respective intentions of the parties through an e-mail communication. Under these methods the contractual parties recognize that they are legally bound, precisely because there is no doubt of the identity of the actual sender and his intention to be bound.

As a result, where contracts are concluded by means of e-mail correspondence and are subject to Greek law, the intention of the contractual parties to be bound can be proved by original copies of the messages exchanged that are contained in the computer's hard disc, that can be printed on paper and ratified by an attorney at law.⁸ [...]

II. The claimant asks the competent court to order the respondent to pay,⁹ through the special proceedings of a payment order, and in order for its demand to be proved, it submits the following documents: (A) An attested copy of an e-mail, dated 7.12.2009, legally translated from English into Greek, that the respondent person sent to the applicant-claimant, by which it verified and recognized by the respondent, and she promised to pay to the applicant the amount of 299.000 Euros in 12 unequal installments, as follows: the amount of 16.000 € at the end of January 2010, 16.000 € at the end of February 2010, 16.000 € at the end of March 2010, 25.000 € at the end of April 2010, 30.000 € at the end of May 2010, 35.000 € at the end of June 2010, 35.000 € at the end of July 2010, 35.000 € at the end of August 2010, 35.000 € at the end of September

3 This has also been held in *Payment Order 1327/2001 Court of First Instance of Athens, DEE 2001, p. 377, see volume 3 (2006), 104 – 107 for a translation of this case and volume 1 (2004) 83 – 86 for a case note.*

4 This has also been held in *Payment Order 1327/2001.*

5 *Payment Order 1327/2001 Court of First Instance of Athens, Court Of First Instance of Athens 6302/2004.*

6 Article 457 of the Civil Procedure Code,

paragraph 4: "The burden of proof for the validity, if doubted, of photographic or cinematic representations, recordings and any other mechanical representation, lies to anyone who presents and invokes them".

7 *Court of First Instance of Athens Payment Order 1327/2001, DEE 2001 (377), Court of First Instance of Athens Payment Order 6302/2004 Arm2005 (239), Court of First Instance of Athens 1963/2004, NOMOS.*

8 *Court of First Instance of Athens Payment*

Order 1327/2001, DEE 2001 (377), Court of First Instance of Athens Payment Order 6302/2004 Arm2005 (239), Court of First Instance of Athens 1963/2004, NOMOS.

9 The issuance of a payment order is subject to articles 623-634 of the Greek Civil Procedure Code. It refers to a special court proceedings initiated by written application of a party claiming payment of a debt against another party, on the condition that the obligation of payment and the amount will be proved.

2010, 35.000 € at the end of October 2010, 16.000 € at the end of November 2010, 15.000 € at the end of December 2010.

This e-mail that was sent is a resemblance of the data copied in the magnetic disc of the correspondent's computer. These data are resembled in a readable format, after being processed and were printed out in a tangible document through a connected printer. As a result, the aforementioned electronic mail was legally 'delivered' to the applicant and, according to the previously stated legal opinion, it comes under the definition of the mechanical representation of the article 444 section c of the Civil Procedure Code and, consequently, it constitutes and comes under the rules of private documents (although it does not have a signature in a traditional form), and provides full evidence for its content, as defined in article 448 paragraph 2 of the Greek Civil Procedure Code. ... (B) an attested copy of the applicant's out of court declaration, dated 4.8.2010, which was lawfully served as a writ of action in 4.8.2010. With the above-mentioned out of court declaration, the applicant lodged a protest for a payment (within 5 days) of the debt, and the correspondent did not respond nor paid any of the above-mentioned amounts. (C) Attested copies of the following invoices (legally translated from English into Greek that were issued by the applicant for the buying of products from the correspondent in the years 2008 and 2009). The total sum of the invoices was recognized by the correspondent with the above-mentioned e-mail, dated 7.12.2009. [...]

As a result, the application has been legally submitted, based on the above-mentioned legal considerations and articles 623-634 of the Civil Code Procedure, and it is completely proved by all the submitted documents, legally stamped and valid.

[The application is granted...]

Translation © Michael G. Rachavelias, 2013

Commentary

The judge's legal thinking in the issuance of this payment order is based on the same legal reasoning as a number of previous decisions that have been translated and published in the journal (Payment order 1327/2001, 1963/2004, 8444/2011 etc). With this case, it seems that the case law is now well established in the Greek legal system, mainly related to:

- a) the fact that an e-mail address is (or can be) equivalent to a manuscript signature. Indeed, an e-mail address can be correctly classified as a simple electronic signature. According to this decision, such electronic documents have the same evidential weight with other private documents, under the requirements of article 445 Code of Civil Procedure. So, the printed copy of an e-mail is a legally attested copy providing full evidential weight (although, as far as this thinking is concerned, one could argue that a printed e-mail is an original document, not a copy).
- b) A problem can appear regarding the identity of the sender, because the way the system operates, it is easy for someone (other than the person who owns the electronic mail address) to send a message without their approval. The above-mentioned decision compares the defectiveness of such a message to a traditional act of forgery, as described in articles 460 and sequential of the Civil Procedure Code. According to the judge, the burden of proof lies to whoever appeals that defectiveness, because the function of the electronic mail acts to guarantee its credibility, and any possible malfunction does not originate from a system flaw but from the intervention by a third party. However, since it is held that electronic documents can be described as private documents according to article 445 of the Civil procedure code, it is possible to demonstrate that it is technically possible for someone to prove that a technical error occurred that altered the actual mechanical representation.

© Michael G. Rachavelias, 2013

Michael G. Rachavelias is a member of the editorial board.